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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,582	09/29/2003	James Michael O'Dwyer	8676.0005.01	9975
22852	7590	05/08/2006		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER CHAMBERS, TROY	
			ART UNIT	PAPER NUMBER
			3641	

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/671,582

Applicant(s)

O'DWYER, JAMES MICHAEL

Examiner

Troy Chambers

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-35 is/are pending in the application.
- 4a) Of the above claim(s) 22-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims 22-35 drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01. Any reply that does not include cancellation of the above claims will be deemed non-responsive.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 9-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.
3. Claim 9 recites, "a firing controller *programmed to receive* signals from the sensor system." It is not clear how or in what manner this programming function takes place since the controller is not disclosed as having a processor or computer.
4. Claim 9 recites a "predetermined land area". Neither the drawings nor the specification describe how or in what manner a particular land area can be predetermined.

5. Claim 10 requires the intervention of an operator. However, it is not clear how or in what manner operator intervention takes place when claim 9 requires the system to be "programmed" and to operate "automatically".

6. Claims 9-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

7. Claim 9 recites, "a firing controller *programmed to receive* signals from the sensor system." However, neither the drawings nor written specification disclose a firing controller capable of being programmed.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 9-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claim 9 recites, "a plurality of fixed target zones". It is not known what is meant or encompassed by this limitation since it does not defined or described in the original specification.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4617750 issued to Garehime in view of WO 9420809 issued to O'Dwyer. With respect to claims 9, 10, 11, 12 Garehime discloses a defense system for an area comprising: at least one optics sensor 128; multiple barrel gun 126; a firing controller (the operator); and video console 26. However, Garehime does not disclose each barrel being loaded with multiple projectiles that are sequentially selected and fired. O'Dwyer discloses such a barrel. At the time of the invention, one of ordinary skill in the art would have found it obvious to provide the system of Garehime with the barrel system of O'Dwyer. The suggestion/motivation for doing so would have been to allow the operator of the Garehime device to fire projectiles singly, in pairs, or in any other combination. (WO 9420809, pg. 2, ll. 12-14). The device can be programmed to operate automatically. Col. 6, ll. 58-66

3. With respect to claims 13 and 14, the weapon is remote and have a fixed orientation (any direction that the operator points it to is fixed) to fire directly at the intruder.

4. With respect to claims 15, 16 and 17, Garehime discloses remote sensors 58, 62 (fig. 4). Claim 16 is a method claim and, therefore, does not add any structural element to be given patentable weight.

5. With respect to claim 18, O'Dwyer discloses projectiles that may be round or dart-like (pg. 2, ll. 15-20).

6. With respect to claim 19, Garehime discloses barrel block 390 provided with a plurality of barrels 444 radiating from core 398 (Fig. 22). It is capable of being concealed within the ground.

7. With respect to claim 20, the grenade box is launched into the air with the airplane upon ascent and is capable of use while the plane is descending.

8. With respect to claim 21, O'Dwyer discloses an electrically fired mechanism not requiring ammunition feed or an ejection system.

### ***Response to Arguments***

9. Applicant's arguments filed 04/26/06 have been fully considered but they are not persuasive.

10. First, the applicant makes several statements directed to the Examiner's alleged failure to properly reject the *amended claims*. However, applicant's amended claims were presented after the Final Office Action and not analyzed by the Examiner. The Applicant should cease providing arguments directed to the Examiners failure to apply a proper rejection when it is clear that the subject matter of the amended claims were not available for prosecution.

11. Any limitations directed to a "predetermined land area" will not be given patentable weight. The "predetermined land area" mentioned in the preamble does not add any structural limitations to the claims and is therefore directed to intended use. Moreover, any limitation referring back to said intended use will be void of patentable weight as well. In any event, Garheim discloses that the invention can be used in banks

or prisons that are located on the land. The device disclosed by Garheim is configured to be capable of firing a warning shot at the ground to avoid killing suspects.

12. Applicant addition of the limitation “programmed to receive” does not serve to provide a patentable distinction over the prior art. First, applicant’s specification does not provide enablement for a firing controller capable of being programmed. Second, using a broad interpretation of “programmed” since it is not defined in the specification, a human operator can be trained or “programmed” to detect an intruder or terrorist.

### ***Conclusion***

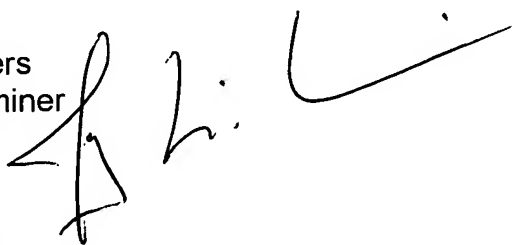
13. This is a Request for Continued Examination of the instant application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (571) 272-6874 between the hours of 7:00 a.m. to 3:30 p.m., M-F. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (571) 272-6873.

Troy Chambers  
Primary Examiner  
Art Unit 3641

A handwritten signature in black ink, appearing to read 'T. Chambers', is written over the printed name and title.

TC  
02 May 2006